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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/849,346

05/19/2004

Mohammed N. Islam

074036.0134

6695

5073

7590

09/02/2004

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EXAMINER

SPECTOR, DAVID N


ART UNIT

PAPER NUMBER

2873

DATE MAILED: 09/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/849,346	Applicant(s) ISLAM ET AL.	
	Examiner David N. Spector	Art Unit 2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>0504</u> . | 6) <input checked="" type="checkbox"/> Other: <u>DETAILED ACTION</u> . |

DETAILED ACTION

Double Patenting Rejection

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Omum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969). A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b). Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-27 of the instant application are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over particular combinations of the claims presented collectively in U.S. Patent No. 6,407,851 (hereinafter '**851**'), U.S. Patent No. 6,597,491 (hereinafter '**491**'), U.S. Patent No. 6,611,366 (hereinafter '**366**'), and U.S. Patent No. 6,654,157 ('**157**'). Although the conflicting claims are not identical, they are not patentably distinct from each other for the following reasons.

(a) Claims 1-6 of the instant application are drawn to a fault tolerant network with a particular combination of features/limitations recited collectively in Claims 38 and 39 of the '**366**' patent; taken together with Claims 1, 31, 36, and 74 of the '**851**' patent.

(b) Claims 7-17 and 27 of the instant application are drawn to an optical processing device with a particular combination of features/limitations recited collectively in Claims 2-12, 14-33 of the '**491**' patent.

(c) Claims 18-26 of the instant application are drawn to a method of communication [*sic.*] optical signals with a particular combination of features/limitations recited collectively in Claims 49-59 of the '**851**' patent; Claims 40-50 of the '**366**' patent; and Claims 9-21 and 54-73 of the '**851**' patent.

Other Remarks/Information

3. The information disclosure statement submitted on May 19, 2004 has been received. The patent number provided for one of the patents cited in the aforesaid IDS (e.g. U.S. Patent No. 6,597,492 B2; cite 1, pg. 4/8 of said IDS) is inconsistent with the issue date, applicant's name, and other data provided on said IDS with aforesaid patent number. All of the other documents/patents included in said IDS have been considered by the examiner; accordingly, a copy of the form PTO-1449 submitted with the IDS has been initialed/signed by the examiner and enclosed with this Office action for applicant's records.

4. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

5. Any other inquiry concerning this communication or earlier communications from the examiner should be directed to David N. Spector whose telephone number is (571) 272-2338. The examiner can normally be reached at this number Monday through Friday between 6:00 AM and 2:30 PM. The fax number for the organization where this application is assigned is (703) 872-9306.

August 31, 2004

A handwritten signature in black ink, appearing to read 'D.N. Spector', with a long horizontal line extending to the right.

DAVID N. SPECTOR
PRIMARY EXAMINER